LE COPY

Office-Supreme Court, U.S.
FILED
FEB 26 1959
JAMES R. BROWNING, Clerk

No. 680

In the Supreme Court of the United States

OCTOBER TERM, 1958

MARIA JERITZA SEERY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
GEORGE COCHRAN DOUB,
Assistant Attorney General,
SAMUEL D. SLADE,
HERSHEL SHANKS,
Attorneys,
Department of Justice,
Washington 25, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statement	2
Argument	5
Conclusion	6

CITATIONS

Seery v. *United States*, 127 F. Supp. 601	2
Constitution of the United States, Fifth Amendment	2

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 680

MARIA JERITZA SEERY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Claims (Pet. App. A. 1-A. 8) is reported at 161 F. Supp. 395.

JURISDICTION

The judgment of the Court of Claims was entered on May 7, 1958 (Pet. App. A. 1). A motion for rehearing was denied on November 5, 1958 (R. 167). The petition for a writ of certiorari was filed on January 30, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the findings of fact made by the Court of Claims with respect to the loss sustained by petitioner as a result of Army occupancy of her Austrian property during 1945, 1946, and 1947 are correct.

STATEMENT

This is a suit for just compensation under the Fifth Amendment for the value of certain personal property which was allegedly lost, destroyed, or stolen during occupancy by the United States Armed Forces of certain premises owned by petitioner in Unterach, Austria, during 1945, 1946 and 1947. Petitioner also seeks recovery for damage to her real estate. The Government initially moved for summary judgment on the ground that under the facts as alleged there had been no taking under the Fifth Amendment. This motion was denied by the Court of Claims in an opinion which held that "the plaintiff's property was taken under such circumstances that she was entitled under the Fifth Amendment to the Constitution, to be paid just compensation". *Seery* v. *United States*, 127 F. Supp. 601, 606.

Following the denial of the Government's motion for summary judgment, the case was referred to a Commissioner of the Court of Claims to determine what property had been taken and its value. After an extended trial, the Commissioner concluded that the value of the property taken from petitioner was $2,132.00 (R. 129). Petitioner filed exceptions to these factual findings of the Commissioner. The Court of Claims, "[w]ithout any pretense of accuracy, and treating the

question as a jury would have to treat it" (Pet. App. A. 7), increased the award to $10,000, plus $1,000 in interest (Pet. App. A. 7-A. 8).

The facts may be briefly summarized as follows: Petitioner, an American citizen, is the owner of three properties in Unterach am Attersee, Austria (Pet. App. A. 1). Property No. 100, known as the "Haus am See", is a castle-like villa of some 20 to 24 rooms (Pet. App. A. 9). Property No. 99, known as the Stoeckl, is a guest house of nine rooms across from the Haus am See (Pet. App. A. 9). Property No. 125, known as the Wachtl Villa, is a smaller villa of nine rooms some distance from the other two properties (Pet. App. A. 9). For approximately two years during 1945, 1946, and 1947, the United States Army took possession of the Haus am See for use as a rest center for officers (Pet. App. A. 3-A. 4). The claim is for the loss, allegedly during the two-year period of Army occupation, of large numbers of highly valuable items of silver, china, crystal, pictures, rugs, linens, tapestry and furniture, as well as for asserted injury to the real property.

Petitioner's major difficulty in proving her loss at the trial was in establishing the presence of the items for which she sought recovery at the time the Americans took possession in 1945. Petitioner herself occupied the Haus am See for the summer months from 1930 to 1935 (Pet. App. A. 9). However, in the fall of 1935, she came to the United States and did not return to Austria until 1948 (Pet. App. A. 2). Her proof of loss is based largely on her memory of an inventory, not introduced in evidence, which she took before she departed in 1935 (Pet. App. A. 4, A. 11). The inventory itself was allegedly stolen in 1948 before the trial,

and in any event was made for her personal use and was neither detailed nor complete (Pet. App. A. 11).

The Government, on the other hand, introduced voluminous testimony tending to show that, regardless of the valuables contained in the houses in 1935, very little of that claimed was there in 1945 when the Army took possession of the Haus am See. Evidence was introduced that a unit of the German Army occupied the property in 1941 (Pet. App. A. 2). At various times after 1941, several of petitioner's friends and relatives, including the former German consul at Los Angeles, occupied parts of the property with petitioner's permission (Pet. App. A. 3). At times there were disagreements between these occupants as to who had prior rights (Pet. App. A. 3). In 1944, the Germans took possession of the Haus am See, first as a nurses' training school, and then as a home for unwed mothers (Pet. App. A. 3).

In addition, the evidence also contains testimony regarding the condition of the property at various times prior to, during, and after the American occupancy, as well as several inventories made by the Germans in 1944 and 1945, by the Americans in 1946 and 1947, and later inventories made by petitioner.

On the entire evidence, the Court of Claims concluded (Pet. App. A. 4-5):

> Most of the missing valuables were relatively small objects, dishes, silver, porcelain decorative pieces, pictures, rugs, etc. They could have been carried off very easily by anyone who had access to them. Probably many of them would, if they had been there, have been carried off by the perhaps thousand or more young officers who made

use of the rest home. We think, however, that not many of these objects were in house No. 100 [the Haus am See] when the Army took possession of it.

In an attempt to deal as equitably as it could with petitioner's claim on this evidence, the Court of Claims awarded petitioner $10,000, plus $1000 in interest (Pet. App. A. 7):

> * * * There were accurate inventories made at the beginning and the end of the second year of the Army's occupancy, and those inventories showed a considerable loss by breakage or disappearance of objects. The first year of occupancy would have involved much more use of the plaintiff's things, with proportionately more breakage and disappearance. The house no doubt had hard usage during the occupancy.
>
> We think a considerable amount of the plaintiff's personal property was lost or destroyed while in the Army's possession, and that considerable damage was done to her house. Without any pretense of accuracy, and treating the question as a jury would have to treat it, we conclude that the plaintiff may recover ten thousand dollars.

ARGUMENT

This petition seeks review of factual findings as to the extent of loss, based on a record of over 2,100 pages, supplemented by 98 exhibits introduced by plaintiff and 53 by the Government. The detailed examination petitioner would have this Court undertake has already been performed twice, first by a Commissioner of the Court of Claims whose findings of fact comprise 29

printed pages, R. 103-131), and then by the Court of Claims which made its own exhaustive study of the record as evidenced by its 31 pages of detailed findings. (Pet. App. A. 8-A. 39). The issues are purely factual and restricted to this particular case. No question of any general application is presented. Further review of the factual issues by this Court is not merited.

CONCLUSION

It is respectfully submitted that the petition for certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

GEORGE COCHRAN DOUB,
Assistant Attorney General.

SAMUEL D. SLADE,
HERSHEL SHANKS,
Attorneys.

FEBRUARY 1959.

☆ U. S. GOVERNMENT PRINTING OFFICE 1959 497363 ° 1959